

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEODAN VASQUEZ,

Defendant.

No. CR07-3039-MWB

**ORDER REGARDING  
DEFENDANT'S MOTION FOR  
RELIEF FROM FINAL JUDGMENT**

This case is before me on defendant Leodan Vasquez's *pro se* Motion For Relief From Final Judgment Pursuant To Federal Rule Of Criminal Procedure 60(b) (docket no. 197). In his motion, defendant Vasquez requests my permission to file a Motion To Vacate Sentence and Judgment Pursuant to 28 U.S.C. § 2255 and consider that motion as timely. First, Federal Rule of Criminal Procedure 60(b) concerns victims rights and has no applicability here.<sup>1</sup> Moreover, defendant Vasquez does not need my permission to file his § 2255 motion. However, I cannot consider the timeliness of a § 2255 motion until it

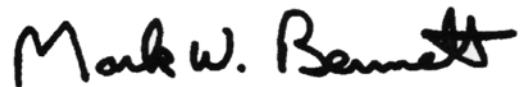
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<sup>1</sup>If defendant Vasquez intended to cite Federal Rule of Civil Procedure 60(b), that rule is inapplicable to criminal cases. *See United States v. Eggleston*, 24 Fed. App'x 656, No. 01-3658, at \*1 (8th Cir. Jan. 16, 2002) ("[W]e agree with the district court that Rule 60(b) applies only to civil cases. . . ."); *see also United States v. Mortimer*, 256 Fed. App'x 468, 469 (3d Cir. 2007) ("Rule 60(b) of the Federal Rules of Civil Procedure . . . applies to civil, not criminal, cases."); *Dubin v. Real*, 191 Fed. App'x 528 (9th Cir. 2006) ("an action under Rule 60(b) of the Federal Rules of Civil Procedure cannot be used to collaterally attack a *criminal* conviction"); *United States v. Triplett*, 166 Fed. App'x 362 (10th Cir. 2006) (holding that Rule 60(b) has no applicability to a criminal proceeding); *United States v. Mosavi*, 138 F.3d 1365, 1366 (11th Cir. 1998) ("Rule 60(b) simply does not provide for relief from judgment in a criminal case . . . .").

is actually filed. *See United States v. McFarland*, 125 Fed. App'x 573, 2005 WL 768731 (5th Cir. 2005); *Green v. United States*, 260 F.3d 78, 82 (2nd Cir. 2001); *Reed v. United States*, 13 Fed. App'x 311, 2001 WL 700811 (6th Cir. 2001); *United States v. Leon*, 203 F.3d 162, 163 (2nd Cir. 2000). Therefore, defendant Vasquez's motion is denied. Only if and when defendant Vasquez files a § 2255 motion will I consider and rule on its timeliness.

**IT IS SO ORDERED.**

**DATED** this 16th day of January, 2014.



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MARK W. BENNETT  
U. S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA